THE HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO

SECOND APPEAL Nos. 868 of 1997 and 119 of 1998

COMMON JUDGMENT:

Both the Second Appeals are filed by the plaintiffs in O.S.Nos.69 and 70 of 1987 on the file of the Subordinate Judge, Tadepalligudem.

The case of the plaintiffs is that an extent of Ac.5-04 cents of land in Sy.Nos.25/1 and 154/1 of Yanalapalli village of Pentapadu Mandal, West Godavari District was given on lease to the defendant on 10.02.1978 for a period of six years on a condition of payment of 45 bags of paddy towards first crop, and if the defendant cultivates the dalwa crop, if allowed by the authorities either in rotation or otherwise, the defendant shall deliver half of the produce besides bearing half of the expenses towards the manures and also half of the taxes towards the second crop. The defendant took possession of the property and as he failed to pay the amount of first crop and also dalwa crop, the suit in O.S.No.70 of 1990 was filed for the years 1987 to 1989 and the suit in O.S.No.69 of 1987 was filed for the period from 1984 to 1986. They include the claim for dalwa crop and also the first crop. The suit in O.S.No.69 of 1987 was filed for recovery of Rs.43,894.56 paise and the suit in O.S.No.70 of 1990 was filed for recovery of Rs.37,667.57 paise.

In both the suits the defendant has raised a similar contention that he is not liable to pay the maktha for the dalwa crop and, therefore, there being no agreement, he is not liable to pay the same. He also claimed deposit of some amounts towards first crop by disputing the value of the paddy as claimed.

After considering the material on record, the suit in O.S.No.69 of 1987 was decreed for the suit amount after deducting a sum of Rs.4,719.68 paise with interest at 6% from the date of decree till the

date of its realization. As against that A.S.No.60 of 1995 was preferred to the Court of the II Additional District Judge, West Godavari District at Eluru who allowed the appeal holding that the plaintiff is not entitled for the lease amount for the dalwa crop and consequently reduced the decreetal amount to Rs.1,705.50 paise and granted costs of the appeal also to the defendant. As against that, Second Appeal No.868 of 1997 was filed. Against the judgment in O.S.No.70 of 1990, which was decreed after deducting a sum of Rs.5,361.04 paise, an appeal was preferred in A.S.No.52 of 1995 on the file of the II Additional District Judge, West Godavari District at Eluru who allowed the appeal and decreed the suit of the plaintiff only for a sum of Rs.1,502/- and directed the costs to be paid to the defendant. Aggrieved by the said judgment and decree dated 01.10.1996, Second Appeal No.119 of 1998 is preferred.

The points that arise for consideration are:

1. Whether the defendant is not liable to pay the lease amount for the dalwa crop since the original lease agreement does not incorporate the same?
2. Whether the oral evidence on that aspect is admissible?

POINTS:

It is not in dispute that prior to the filing of these two suits, the plaintiff has also filed a suit in O.S.No.140 of 1984 for recovery of the arrears of the second crop relating to the years 1982-83 and the said suit was decreed. As against that judgment, an appeal in A.S.No.51 of 1985 was preferred to the District Court, Eluru and on the point of jurisdiction, it was returned and the appeal was presented before this Court and it was numbered as A.S.No.227 of 1994 and the said appeal has been dismissed for non-prosecution and the said judgment in O.S.No.140 of 1984 has been confirmed, which has become final.

Furthermore, it is represented by the learned counsel for the appellant that two more suits in O.S.No.11 of 1994 and 57 of 1996

were filed for recovery of the maktha for both first crop and dalwa crop and the said suits have been decreed and appeals in A.S.No.115 and 116 of 2000 were said to have been filed on the file of the I Additional District Judge, Eluru and the defendant has withdrawn those appeals saying that the matter has been settled and some payments were made towards full satisfaction and that is being contested.

Therefore, according to him, the above circumstances clearly go to show that the liability of the defendant has been decided even in the earlier suits for payment of the dalwa crops, even if the original lease deed is silent and consequently the defendant is stopped from questioning the liability.

There is no dispute about the fact that the lease agreement was entered into in the year 1978 and at that time, evidently, there was no permission to raise the dalwa crop. In both the suits under appeal, the lower Court has taken into consideration the fact that there was said to be an understanding in the presence of the elders for payment of the value of the dalwa crop. In fact, clause No.3 in the lease deed clearly stipulates that if the defendant cultivates dalwa crop, which will be allowed by the authority either in rotation or otherwise, the defendant shall deliver half of the produce besides bearing half of the expenses towards manures and also half of the taxes payable towards the second crop. In view of the above circumstances, when a specific recital about the liability to pay the maktha for the dalwa crop being stipulated under the lease agreement, it is neither open for the defendant to deny the liability nor is proper for the Court to say that the agreement does not stipulate the value of the maktha and consequently it is in variance with the registered lease deed and the maktha payable.

Evidently, by the date of alleged lease in 1978, no permission was granted and it was only for the subsequent periods the Government has permitted and furthermore the fact that the defendant

has raised the dalwa crop and got the benefit is not in dispute. What is required to be registered is a lease agreement pertaining to the period and when the terms are clear and when only on a consequence of raising the crop the maktha is payable, the valuation on the date of registration of the lease deed does not arise. In fact, the defendant admits that he raised the dalwa crop till 1984, merely because the reference to the particular paddy crop as a second crop or dalwa crop is not mentioned and the lease agreement only refers to dry crops like gingery and groundnuts, etc., the defendant cannot avoid the liability. In fact, there is evidence of the elders about the particulars of settlement and in fact in his earlier litigation, the defendant admitted that there were talks about the liability to payment of the rent for dalwa crop. The Village Karanam was also examined to prove the above facts. What was claimed as exemption is only with regard to dry crops and not with regard to the dalwa crops. The lower appellate Court has, therefore, not taken into consideration the contingency contemplated by the parties and has only taken into consideration the recitals in the lease deed mentioning as bill maktha and thereby exonerating the liability of the defendant. It is also to be noted that the conduct of the defendant is not proper since he was not paying even the admitted maktha for the first crop. A tenant cannot avoid payment of the maktha having enjoyed the fruits of cultivation. Therefore, the judgment passed by the lower appellate Court is against the reasoned judgment of the trial Court and also the judgment already held against the defendant holding him liable for payment of the money and consequently the appeals are to be allowed.

Accordingly, both the Second Appeals are allowed and the respective judgments of the first appellate Court are set aside and the respective decrees and judgments of the trial Court are restored. No costs.

N.R.L.NAGESWARA RAO, J

14-11-2011

MR

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